

Richard T. Seymour

From: Fonstein, Cliff H. [cfonstein@sidley.com]
Sent: Friday, May 30, 2008 4:27 PM
To: rick@rickseymourlaw.net
Cc: Seltzer, Joanne
Subject: RE: Graves: The Complaint

Rick,

While I appreciate your commitment to drop all the backdating allegations, that only addresses a part of the allegations that are being challenged in the Rule 11 motion. We've discussed these allegations back and forth for months now and you, in addition, have had the 21 day notice period to examine these issues and to chat with your client about them. You've actually had more than 21 days notice because as a professional courtesy to you and Steve, I gave you plenty of advance warning of the Rule 11 filing.

It really is a simple decision that does not require much analysis. You already know the relevant documents because we've referred you to them repeatedly. Also, and hopefully, you have already discussed the documents and our motion with your client. That's what the 21 day notice period is for.

On a related point, we have not ignored any discovery obligations. We've addressed your concerns promptly, and way back in February suggested a meet and confer which you never responded to.

We will file the motion today and, should you ultimately withdraw the offending allegations, will withdraw the motion.

Cliff

-----Original Message-----

From: Richard T. Seymour [mailto:rick@rickseymourlaw.net]
Sent: Friday, May 30, 2008 3:42 PM
To: Fonstein, Cliff H.; Seltzer, Joanne; Maue, Allison E.
Cc: 'Rogin, Jonathan'; 'Jullion Taylor'
Subject: Graves: The Complaint

Cliff, this is to confirm the commitments I just made in our call.

First, we are committing to review the allegations of the Complaint in light of the dropping of the backdating allegation, to determine whether further changes should be made in light of that change.

Second, we are committing to review all of the allegations in light of the very small amounts of discovery produced by defendant.

Third, I expect that there will be some changes, but cannot characterize today what those changes will be.

Finally, we expect to finish these reviews and file a motion for leave to file a revised Complaint next week.

We insist on carrying out these commitments in a professionally responsible manner, and will not respond to your ultimatum that we tell you this afternoon what we will do.

The defendant could have made this entire process far quicker and far more definitive by honoring its discovery obligations. Instead, it has protracted this process by ignoring its obligations. You have said that you are frustrated with us, and I have said that we are frustrated with the company.

Putting that behind, you have fair commitments from us, and a short time frame for

their fulfillment. You and the company will decide whether to file your Rule 11 motion today, and I say again that I do not understand the ultimatum.

I do recognize that you said in our call that the company would probably withdraw the Rule 11 motion if our amendment next week drops the allegations of a false filing. It seems to me that that puts the cart before the horse, but the company will do whatever the company will do.

Rick

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"We represent the dispossessed of the Earth, and executives recently shown the door."

Mediation

Arbitration: Listed on American Arbitration Association Commercial Arbitration Roster and Employment Panel Roster.

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